

Blog Post

NY Employers: Note New NY COVID-19 Guidance

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With the COVID-19 landscape in New York changing rapidly, employers may be understandably confused about what rules to abide by when it comes to things like masks, social distancing, and safety protocols. Significant changes may be on the horizon, but employers should not pull the trigger on any sweeping changes to their policies just yet. Despite recent [guidance](#) from the CDC, New York employers should continue to stay their course and follow the previous industry-specific guidelines issued by the State, which are still in effect at this time.

On May 19th, New York State formally adopted the [CDC's May 13th guidance](#), pursuant to which fully vaccinated individuals generally need not wear masks or socially distance, whether indoors or outdoors, except in limited circumstances. That same day, the State published its own [guidance](#) that applies to “most businesses and public settings” – terms which have not been explicitly defined, although there are some clear carve-outs such as public transit, nursing homes, healthcare settings, pre-K to 12 schools, homeless shelters, and correctional facilities, or in places that exceed the State’s social gathering limit of 250 individuals indoors or 500 individuals outdoors. Given the absence of any further definitions in the guidance, it appears that NY’s guidance is intended to apply broadly.

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Based on the most recent guidance from the State, it appears that – at least at the time of this writing – the following guidelines now apply:

- Fully vaccinated individuals (a term referring to individuals who received a single-dose vaccine or the second dose of a two-dose vaccination series and at least 14 days have passed) do not need to wear masks or be socially distanced, whether inside or outside, except in limited circumstances. (Specifically, masks and social distancing is still required in public transit, nursing homes, healthcare settings, pre-K to 12 schools, homeless shelters, and correctional facilities; and in places that exceed the State’s social gathering limit of 250 individuals indoors or 500 individuals outdoors.) Meanwhile, individuals who are not fully vaccinated must generally continue to wear masks and be socially distanced in most settings, although they need not wear masks outdoors if they are able to socially distance.
- Businesses may (i) require proof of full vaccination status through paper form, digital application, or the State’s Excelsior Pass or (ii) rely upon self-reporting of vaccination status (*i.e.*, an honor system).
- If the vaccination status of individuals is unknown or individuals do not present proof of full vaccination status, businesses must maintain the 6-foot social distancing requirement in the areas where those individuals congregate.
- The business may decide to apply this guidance to the entire establishment or a separate, designated part of the establishment. Put differently, businesses may partition their establishments into sections for individuals who have been fully vaccinated, and those who have not.
- Business capacity is only limited by the space available for patrons or parties of patrons to maintain the required social distance for unvaccinated individuals (to the extent there are any in the establishment).

Notwithstanding these developments, please be advised that the State has confirmed that it is not yet lifting or otherwise revising its industry-specific requirements that apply to workplaces, including (i) state/local health authority event notification, (ii) health screening, (iii) contact information for tracing, (iv) enhanced air handling and building system standards, (v) hand hygiene, and (vi) environmental cleaning and disinfection protocols. Rather, all of these other requirements will remain in effect until at least June 4th, when the State is expected to announce updated industry-specific guidance pursuant to the NY Hero Act (which we will discuss in greater detail in an upcoming blog post). However, in the interim, employers will be faced with navigating the uncertain waters between the State's new mask/distancing/capacity guidelines (which are less restrictive) and the existing industry-specific guidelines (which are more restrictive).

In sum, there appears to be significant tension between the permissiveness of the State's new mask/social distancing guidance and the restrictiveness of the State's pre-existing industry-specific guidance – a tension we expect to be reduced (if not eliminated) in the coming weeks. Accordingly, please contact your Akerman attorney if you require assistance in navigating the rapidly changing return-to-work landscape in New York or elsewhere.

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